

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINETH DAY OF DECEMBER,
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE

JUSTICE M.H.S. ANSARI

and

THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 22791 of 2004

Between:

Hetero Drugs Ltd, rep by tis Director Sri.M.Pera Reddy
Hetero House H.No.8-3-166/7/1, Erragadda,
Hyderabad.

..... PETITIONER

AND

- 1 Commissioner of Customs&Cemtra; Excise(Appeals-II)
L.B.Stadium Road, Basheerbagh,
Hyderabad-4.
- 2 Additional Commisioner of Customs&Cemtra; Excise.
IV Commissionerate,
Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying
that in the circumstances stated in the Affidavit filed herein the High

Court may be pleased to issue a writ or any other appropriate writ or order or direction more particularly in the nature of the Writ of Mandamus, more particularly in the nature of the Writ of Mandamus, declaring the action of the 1st respondent in so far as directing the deposit of Rs 25,00,000/- as duty, dt 29-10-2004 as a condition precedent for maintaining the appeal, as illegal, arbitrary and vitiated by non application of mind; and (ii) direct the respondent authorities to dispose of the appeals, by granting total waiver of pre-deposit of duty and penalty or subject to the petitioner depositing a sum of Rs.5,00,000/- and pass such other order or orders.

Counsel for the Petitioner:MR.S.CHAKRAPANI

**Counsel for the Respondent No.: MR.ARAJASHEKAR REDDY
(SC FOR CG)**

The Court made the following :

O R D E R (Per MHSA,J)

Heard the learned counsel for the respective parties.

2. Petitioner has questioned in this writ petition the order passed under Section 35-F of the Central Excise Act, 1944 (for brevity 'the Act'), whereunder and whereby the learned Commissioner (Appeals) has directed the petitioner herein – appellant before the respondent – authority, to pre-deposit a sum of Rs.25,00,000/- and on depositing the said amount within the time fixed therein, the balance amount impugned in the appeal was directed to be dispensed with.

3. Under the provisions of Section 35-F of the Act, the appellant is required to deposit with the adjudicating authority the duty demanded or the penalty levied, as pre-deposit for entertaining the appeal. Power is conferred on the appellate authority to dispense with such deposit, subject to such conditions as he may deem fit, in case of undue hardship.

4. Keeping in view the judgment of the Supreme Court in CHANDRAPUR MAGNET WIRES (P) LTD. V. COLLECTOR OF C.EXCISE, NAGPUR and also keeping in view the hardship of the petitioner if it is required to make pre-deposit of the sum demanded in the order under challenge, we are inclined to dispose of the writ petition with a direction that if the petitioner deposits a sum of Rs.12,50,000/- (Rupees twelve lakhs fifty thousand only) within a period of four weeks from the date hereof, appeal pending before the learned Commissioner (Appeals) filed by the petitioner, shall be heard.

5. In case of default in making such deposit within the period so stipulated, appeal shall be liable to be dismissed in terms of Section 35-F of the Act.

6. We clarify that none of the observations made herein, which are of prima facie view, shall prejudicially affect the revenue and the appeal shall be disposed of on its own merits in accordance with law, uninfluenced by any of the observations made herein.

7. Writ petition accordingly stands disposed of. No costs.

AVS _____

Date :09.12.2004 M.H.S.ANSARI,J

T.CH.SURYA RAO,J

To

- 1 Commissioner of Customs&Cemtra; Excose(Appeasl-II)
L.B.Stadium Road, Basheerbagh,
Hyderabad-4.
- 2 Additional Commissioner of Customs&Cemtra; Excose.
IV Commissionerate,
Hyderabad.
3. Two C.D. copies.